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Seventeenth session

SUMMARY RECORD OF THE 265th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 November 1996, at 3 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Second periodic report of the Russian Federation

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Second periodic report of the Russian Federation (continued) (CAT/C/17/Add.15)

1. At the invitation of the Chairman, Mr. Kolossovski, Mr. Kartashkin, Mr. Ivanov, Mr. Katyshev, Mr. Butaev, Mr. Orlov, Mr. Chtcherbak, Mr. Malguinov, Mr. Boychenko, Mr. Tchoumarev and Mr. Loukiantsev (Russian Federation) resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation of the Russian Federation to reply to the questions asked by members of the Committee at the previous meeting.

3. Mr. KOLOSSOVSKI (Russian Federation) said that all the members of the delegation would do their best to answer the many questions asked; any statistical details requested would naturally be transmitted in writing at a later date.

4. The members of the Committee had shown they were aware that the Russian Federation was going through a difficult period in its history. They would be even more aware of the complexity of the situation in the light of the further information with which they would be supplied. The structure of the State and its legislative framework were not yet firmly established, and the country was burdened by the economic and other difficulties related to transition. The problems mentioned by the Committee were thus far from being solved, but the various organs of power and sectors of civil society were actively debating the subject.

5. His delegation had made no reference to the problem of Chechnya, not because it was unwilling to speak about the human rights situation there, but because it wished to draw attention to the fact that since hostilities in the region had ceased, the problem of respect for human rights in a situation of armed conflict no longer arose. The United Nations Commission on Human Rights and other multilateral institutions had recognized that a new situation existed, and the Russian authorities were toiling unremittingly to find a political solution to a problem which was far from simple. In any event, his delegation would endeavour to reply as best it could to the specific questions members of the Committee had put to it about Chechnya; the members of the delegation were all eminent specialists, each of whom would deal with questions relating to his particular field, which meant that they might find themselves dealing with different aspects of the same problem.

6. Mr. KARTASHKIN (Russian Federation), Head of the Presidential Commission on Human Rights, noted that the members of the Committee had considered his country's report in great detail; he would endeavour to answer some of the very specific questions asked. In the first place, it had been asked why the legislation did not include a precise definition of torture and whether the adoption of such a definition was planned. The matter had been given careful consideration when the new Criminal Code had been drafted; opinions had diverged since some specialists had wished expressly to include a definition of torture while others had considered it superfluous in a Criminal Code which

was already very comprehensive. It was a question of methodology, and not of political unwillingness to implement the Convention against Torture. Article 1 of the Convention gave an exhaustive definition of torture which the Russian Federation had incorporated in the Constitution, since it stipulated that universally recognized principles and norms of international law and treaties were an integral part of the country's legal system and took precedence over domestic law. In recent years, international agreements and the principles of international law had very often been invoked in the Constitutional Court and in other courts. Although the Criminal Code did not include a definition of torture, it did contain several provisions concerning criminal liability for causing physical suffering or other ill-treatment, provisions which were very much in line with the definition of torture given in the Convention.

7. Several members of the Committee had expressed concern at the Presidential Decree authorizing detention for 30 days. It was true that, according to the Constitution and various other laws, arrest, detention and police custody could not exceed 48 hours. The Decree was therefore controversial. Some authors considered it illegal while others, referring to article 55 of the Constitution and the International Covenant on Civil and Political Rights, maintained that, in view of the crime rate in the Russian Federation, some rights and freedoms could be restricted out of a concern to protect the rights and freedoms of everyone. The matter would be finally resolved in the new Code of Criminal Procedure to be submitted to the State Duma in the near future.

8. It had been asked whether the Presidential Commission on Human Rights intended to consider the question of prisoners' rights and, more particularly, the problem of prison visits. Referring to the activities of that Commission, of which he was Chairman, he said that it had been set up on 20 May 1996 by Presidential Decree; its first concern had been to establish human rights commissions in all parts of the Russian Federation, since human rights were more likely to be violated in the peripheral regions than in the centre. The Presidential Commission had begun its official duties proper barely a month previously. On 4 November 1996 it had considered the question of the protection of Russian citizens abroad. In January 1997 it would consider the rights of persons who had been arrested, detained or held in police custody. To that end it would benefit from the comments and opinions of the members of the Committee at the current session, which would help it to take such measures as would eliminate the remaining gaps that had been pointed out by the Committee.

9. One member of the Committee had asked whether representatives of non-governmental organizations (NGOs) could visit Russian prisons; that was indeed possible and, if any difficulties arose, the Presidential Commission on Human Rights could help. Cooperation with the NGOs was extremely productive and a number of questions still pending should be settled in the near future to everyone's satisfaction.

10. It had been asked whether the Presidential Commission would deal with the situation in Chechnya. The Commission had decided to follow the situation in that part of the Russian Federation closely and to act if the need arose. He had recently had contacts with representatives of the Helsinki Human Rights

Watch who were currently in Chechnya to investigate specific cases of violations by Russian military personnel of the War Code and Russian laws; he had asked if they also intended to investigate various specific cases of violations of the same standards by Chechen combatants. They had replied that they did not and that their talks with the Chechen leaders had been unsuccessful. Only the representatives of the authorities of the Russian Federation had allowed investigators to speak of violations of the laws of war by Russian military personnel, which testified to the open and sincere attitude of the Russian Federation.

11. Several members of the Committee had asked about human rights training and education. Many organizations in the Russian Federation were concerned, as was the Presidential Commission, which had just published a compendium containing the text of the European Convention on Human Rights and all related protocols. Another compendium in course of preparation would contain nearly all the relevant universal or regional international instruments, including the United Nations Convention of Torture and the European Convention for the Prevention of Torture. Lectures and seminars for Russian officers and soldiers would be broadcast on radio and television. Other ministries and departments were also involved in such activities, which would be described by other members of his delegation.

12. It had been asked whether a person could be expelled from the Russian Federation if he was in danger of being tortured in the country to which he would be sent. The Constitution had no specific provision on that subject, but during extradition proceedings, for example, a whole range of factors, including any risk of torture, were always taken into due account. Where conditions for granting asylum were concerned, it was not true that a person must already be in possession of a laissez-passer; article 63 of the Constitution provided for the granting of political asylum to aliens and stateless persons in accordance with the generally recognized norms of international law and applications were considered in the light of those norms and principles. In the course of the past five years there had never been any intention of refusing a person asylum on the grounds that he had not been in possession of a laissez-passer or residence permit.

13. The question of capital punishment was a matter of concern for Russian leaders and jurists. As the Russian Federation had been admitted to the Council of Europe, it had three years in which to ratify Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the Abolition of the Death Penalty. The Presidential Commission on Human Rights had considered the question and deemed it advisable not to act hastily, but to avail itself of that three-year period in view of the country's crime rate. Given the gravity of the situation and the number of persons guilty of serial murders, the Commission was not in favour of the immediate adoption of the bill on the abolition of capital punishment, but had decided to adopt a moratorium on the execution of sentences, drawn up when the Russian Federation had entered the Council of Europe. The number of executions had greatly decreased since that date; formerly, 10 to 15 convicted criminals had been executed every month, but their numbers had dropped considerably, to 3 in June, 7 in July and 1 in August 1996. That was not good enough, however, and the Russian Federation would have to honour the commitments it had made, thus distancing itself from the Soviet Union, which

had ratified international agreements only to allow decades to go by without bringing its legislation into line with the obligations incurred. The Presidential Commission therefore hoped that the law instituting a moratorium on the execution of convicted criminals would be enacted as soon as possible.

14. It had been asked whether there was any difference between authorized residence and political asylum. Many foreigners were able to reside in the Russian Federation with no difficulty whatsoever once they had legalized their situation with the Ministry of Foreign Affairs; the granting of refugee status, on the other hand, was the prerogative of the President of the Russian Federation alone. While it was easy to obtain a residence permit, it was a much more complex matter to obtain asylum.

15. With regard to legal training in the Russian Federation, human rights were indeed studied in establishments where law was taught. He himself taught a course on human rights at the Friendship among Peoples University, in which the students learned, inter alia, about the Convention against Torture. Institutions which taught economics also gave courses on international law and human rights.

16. It was certainly permissible for any citizen to invoke the Constitution in court and many had already done so. In a whole series of cases pending, reference had been made directly to international agreements signed by the Russian Federation. The Constitutional Court oversaw the implementation of international instruments, particularly in labour matters, although many articles of the Constitution could not take effect without the promulgation of a federal act; article 59 of the Constitution, for example, which permitted any citizen to perform some other kind of service in lieu of military service, provided that the right to do so was governed by a specific act on that question adopted by the Federation.

17. Mr. IVANOV (Russian Federation) said that as a member of parliament and jurist, he took a particular interest in the comments of members of the Committee and looked forward to the continuation of a very fruitful dialogue. Several members of the Committee had asked questions about certain presidential decrees, many of which had contributed to the establishment of democracy in the Russian Federation and to the bringing of its legislation into line with international norms. In practice, a presidential decree could not be amended, although it was true that 50 deputies could appeal to the Constitutional Court to have a particular decree declared unconstitutional. That had been done once, but the case had unfortunately not been closed since there was a serious loophole in the law in that it did not impose any time-limit on the Court for handing down a decision on the cases before it; it could therefore procrastinate indefinitely on thorny issues of a political nature. The Committee could intervene by drawing his country's attention to that point and stressing that it was crucial that the law should be amended by setting a deadline for Constitutional Court decisions. The Committee was perhaps not fully aware of the difficulties encountered, in particular by Parliament, in incorporating international norms into Russian legislation. The principle of the primacy of those norms over domestic law was not yet universally accepted in the Russian Federation and it would be helpful if it could be stated outright and the legislation amended accordingly. It should not be forgotten that the situation in the Russian Federation was very

unstable in the current period of transition. In any event, the reform effort was continuing despite the difficulties, and the Committee's recommendations would be extremely useful.

18. As Mr. Kartashkin had said, the Constitution had already been invoked in court, and the plenary Supreme Council, as it was empowered to do, had issued a special decree to the effect that the courts must enforce the Constitution directly. Where the direct implementation of international norms was concerned, the situation was less clear and he was unable to cite a specific example of those norms actually being invoked in the courts.

19. While admitting that the Constitution contained no definition of torture, he pointed out that representatives of public authority who committed acts accompanied by violence or prejudicial to human dignity could be prosecuted under article 170 of the Criminal Code and could incur up to 10 years' imprisonment. In practice, the problems did not so much relate to the lack of a definition of torture as to the after-effects of the old system which survived in the legal profession; lawyers had often been reluctant in the past to oppose the prosecution. Nowadays, lawyers were acquiring a stronger role. Under the Code of Criminal Procedure, any person who had been arrested or charged had the right to assistance from a lawyer, who would also intervene in the event of improper treatment.

20. Turning to the distressing issue of the situation in Chechnya, which had been the subject of numerous comments, he said that some members of the Committee had referred to national liberation struggle, others to terrorism or banditry, and still others to separatism. In his opinion, the last-mentioned concept most appropriately described the situation in Chechnya. While some of the ideas for which the Chechen separatists were fighting were understandable, the violent acts they committed could not be ignored. The parliamentary commission responsible for studying the situation in Chechnya had noted that in 1994 the Chechen separatists had carried out 305 attacks accompanied by the threatened use of weapons and assault. Many of their acts were in the nature of banditry. The Committee should thus be very careful in its assessment of the situation in Chechnya and not only highlight the inadequacies and offences of the authorities of the Russian Federation. It must be objective and take a balanced view of the matter when it came to draft its concluding observations.

21. It seemed that the members of the Committee had based their comments essentially on information from human rights activists in Amnesty International or the Committee of Soldiers' Mothers. Information from NGOs or committed organizations like the Committee of Soldiers' Mothers was certainly important, but should not be the Committee's only source. He therefore hoped that in its observations the Committee would consider the full extent of the situation in Chechnya. For his part, he would transmit the Committee's observations and recommendations to the political authorities in his country, and the Duma in particular.

22. Mr. BUTAEV (Russian Federation), reverting to the question of procedures for implementing the provisions of the Convention in domestic law, said it should first be borne in mind that international instruments took precedence over domestic law. On 1 January 1997, a new Criminal Code would come into force; article 63 of that Code would establish penalties for offences

committed in circumstances of particular cruelty for the victim. Complicity in acts of torture and violations attributable to public officials would also be punishable. Public officials who were accessories to acts of torture could therefore be brought before the courts. The penal rescurces of the Russian Federation would therefore be expanded as required by international law, and notably the Convention against Torture.

23. A number of questions had been asked concerning presidential decrees, especially Decrees Nos. 1226 and 1815, which had been adopted during a period of emergency to protect the lives and interests of citizens of the Russian Federation. As guarantor of the Constitution, the President of the Russian Federation must protect the rights and freedoms of persons residing in the territory of the Federation. Following analysis of enacted legislation, proposals had recently been submitted to the President of the Federation to repeal the provision which enabled certain persons to be kept in custody for up to 30 days in social rehabilitation centres. It should, however, be clearly understood that that did not involve custody in the sense in which the term was used in criminal law. Persons placed in such centres needed guidance and support for a certain period, and placing them in custody could sometimes be a kind of humanitarian assistance. The allegations that the decrees in question had been aimed particularly at persons from the Caucasus area or Chechnya were not borne out by the facts. In any case, the number of persons placed in social rehabilitation centres was decreasing (from 984 in 1995 to 176 currently).

24. With reference to training programmes for law enforcement officials, a huge restructuring programme was in progress, particularly in relation to training in higher education establishments. The Academy of the Ministry of the Interior and other bodies published law journals and reviews, relating in particular to infringements of the norms of international law or the situation in prisons.

25. In reply to a question on paragraph 76 of the report, he said that specialized services were responsible for drafting regulations and administrative instructions and ensured that they conformed to federal law. In the event of incompatibility with the provisions of the Constitution, for example, the courts and the government procurator's office could be informed.

26. Mr. KATYSHEV (Russian Federation) described the special and original nature of the Office of the Procurator-General of the Russian Federation, which was responsible for overseeing the application of the law by all ministries, departments, organizations, public employees and citizens of the Federation. Procurators carried out the investigation of offences and monitored the situation in places of detention.

27. With regard to the preliminary investigation and the maximum duration of pre-trial detention, article 97 of the Code of Criminal Procedure provided for a maximum of two months, which could be extended to three months for the purposes of the investigation, at the discretion of the procurator of the town or region. It could be further extended to 6 months by the procurator of an autonomous region or a procurator of the same rank, and to 12 months by the Deputy Procurator-General. Beyond nine months, the extension was determined by the seriousness of the offence. The period of pre-trial detention could be

extended to 18 months following a decision by the Procurator-General of the Russian Federation, on the advice of a college of procurators. Before the deadline for the period of detention expired, the examining magistrate was required to make available the information concerning the case to the accused person and his counsel. In June 1996, the Constitutional Court of the Russian Federation had established that the time given to the accused and his counsel to examine the case file should be counted as part of total pre-trial detention. Any extension of his detention could be challenged by the accused or his counsel directly before the judge, who was required to examine the complaint immediately. After hearing the parties, the judge handed down a non-appealable decision confirming or rescinding the extension. The period of pre-trial detention could only be modified thereafter if it emerged that the defendant had committed an offence other than that for which he had originally been held in custody. Those provisions were enforceable during the current period of transition, but in the future the decision to extend a period of pre-trial detention would be taken not by a procurator but exclusively by the judge.

28. If there was any suspicion of evidence having been obtained under torture, the examining magistrate studied all the circumstances of the case very closely. If there was evidence that a confession had been obtained by unlawful means, those responsible were required to appear before the judge. In such cases, the lawyer and the defendant filed a joint complaint with the Office of the Procurator, who had three days to examine it and reach a decision. All complaints were systematically examined with great care.

29. Going back to the situation in Chechnya, he said that in order to forestall any action against local populations and advance the investigations, a post of military procurator, answerable directly to the Office of the Procurator-General of the Russian Federation, had been created in January 1995. The Office of the Procurator for Chechnya, which had been abolished in 1991, had also been restored. In order to further strengthen the primacy of the law in Chechnya and all the northern Caucasus area, an Interregional Office of the Procurator for the Caucasus had been set up, also answerable to the Office of the Procurator-General. More than 1,004 complaints of ill-treatment by military personnel had been filed between January and August 1996; after investigation, 400 had given rise to legal proceedings. Since the establishment of the post of military procurator, more than 1,000 persons had been brought to justice and 228 army personnel had been sentenced. The military procurator was also concerned with forays by armed groups, many of which perpetrated acts of violence against the civilian population.

30. He confirmed the existence of checkpoints set up by the army in Chechnya. They had been established by decree in response to the need to restore a minimum of order in regions where institutions had been practically dismantled. As the institutions had begun to operate again, the checkpoints had been closed down and none were left today. When they had been operational, they had never hindered the freedom of movement of representatives of the international humanitarian organizations, such as the International Committee of the Red Cross and Amnesty International. As for any ill-treatment that might have been meted out at the checkpoints, whenever a complaint had been filed and the facts established, the persons found to be

responsible had been dismissed. There had been a great many attacks by Chechen separatists on peaceful citizens, resulting in hundreds of deaths. For example, on 2 August 1996, a group of partisans had stopped a bus in the Republic of Chechnya, made the passengers get out and shot two people, merely because they had been relatives of a former member of the Office of the Procurator of Chechnya.

31. With reference to the question of extradition, the information which had appeared in the Russian and foreign press had painted a distorted picture. The case in question had concerned a Georgian refugee in Moscow whose extradition had been requested by Georgia. He claimed to have been the victim of political and religious persecution in that country, although in fact he had belonged to a band of partisans and had been facing prosecution in Georgia for attempting to overthrow the constitutional order. The Russian Federation had decided to extradite him since there had been no evidence of his having been tortured in Georgia. Under the law on asylum, a person who had committed any offence, in Russia or in his country of origin, was refused asylum. He was therefore deported in accordance with the law. Each case was an individual one and it was always possible to lodge an appeal with the Federal Immigration Services.

32. Mr. ORLOV (Russian Federation), referring to the question of prisons, said that a solution was beginning to emerge in connection with the problem of conditions of detention, due in part to deficiencies in legislation but also to organizational shortcomings. Following contacts with the Council of Europe and various NGOs, steps had been taken to improve a situation formerly characterized by the fact that prison security had been in the hands of the military. The State had resumed that important function, and the interpretation of the law and applicable international instruments - including the Convention against Torture - was henceforth uniform. As to the former gulags, great efforts had been made to do away with them and only eight prison colonies currently remained. Structural and practical measures had been taken to improve prison conditions and to refurbish ordinary prisons. The Committee could rest assured that the State intended to implement genuine reforms, but the task was a hard one and the system complex. Undeniable progress had, however, been made, as was borne out by the budget for the current year, which had doubled compared with the previous year. Increased allocations had made it possible to create some 13,000 places in ordinary prisons. The programme was an ambitious one and difficult to implement, but the State would do everything in its power to bring it to a successful conclusion. One of the difficulties of reforming the prison system was to be found in people's attitudes, which were much harder to change than the other factors involved. Prison personnel were in the process of being renewed; more than 5,000 people had been accepted for preliminary training, which provided a basic knowledge of the system and a certain amount of practice. Training courses of a similar type were organized in every region. With regard to higher education, the training of lawyers, economists and psychologists was being given particular attention because they were the specialists most needed. In meetings with officials from the Council of Europe, the United Nations and research institutes, it had been decided to prepare teaching material and information in order to be able to implement the United Nations Standard Minimum Rules for the Treatment of Prisoners.

33. Where the health situation was concerned, the Russian authorities did not deny that problems existed in general, and in the prisons in particular. Welcome aid had been contributed by various NGOs and charitable associations in the form of medical supplies. Some 180 medical centres were attached to prisons and there were about 100 hospitals specializing in the treatment of tuberculosis. The Council of Ministers had made provision for specific measures to improve the health situation in the country, in consultation with the Ministry of Health and other concerned bodies.

34. The restrictions on the food rations distributed to unconvicted and sentenced prisoners had been lifted by a ministerial decree of 1994 and food standards had been improved. Obstacles to the distribution of parcels sent to detainees had been removed. Solitary confinement was not regarded as a form of punishment, but was used as a security measure in specific circumstances.

35. Mr. KOLOSSOVSKI (Russian Federation) said that his delegation had been unable to reply to all the questions raised and would endeavour to provide the Committee with additional information as soon as possible.

36. Mr. PIKIS pointed out that the Committee had not denounced the lack of a definition of torture in Russian law but the fact that acts of torture were not offences under Russian criminal law, as required by article 4 of the Convention.

37. The CHAIRMAN said that it was vitally important for States parties to the Convention, whether advocates of monism or dualism, to adopt a definition of torture in their legislation which would cover all points touched on in articles 1 and 4 of the Convention. Since the Convention defined facts and not penalties, each State party must make provision for appropriate penalties in its Criminal Code.

38. Mr. KOLOSSOVSKI (Russian Federation) said that the members of his delegation had taken note of all the Committee's observations. Where the United Nations Voluntary Fund for Victims of Torture was concerned, the Russian Federation was unfortunately not currently in a position to participate for financial reasons, but would endeavour to make a contribution in the future.

39. The CHAIRMAN thanked the Russian delegation and invited it to attend the Committee's 268th meeting in order to hear the Committee's recommendations and conclusions.

40. The Russian delegation withdrew.

The meeting was suspended at 5.45 p.m. and resumed at 5.50 p.m.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 3) (continued)

41. Mr. BRUNI (Secretary of the Committee) announced that he had just received the second periodic report of Portugal, which would be the tenth report to be considered in 1997.

42. Mr. CAMARA and Ms. ILIOPOULOS STRANGAS agreed to serve as Country Rapporteur and Alternate Country Rapporteur respectively for Portugal.

43. It was so decided.

44. Mr. SORENSEN said that in view of the number of reports to be considered in 1997, there was every reason to consider the possibility that the Committee might request permission to hold a third annual session.

45. Mr. CAMARA, referring to a proposal made at an earlier meeting, said that it would be discriminatory to devote a whole day to the consideration of the reports of certain countries when the reports of other countries, where the situation was allegedly better, were considered in half a day.

46. The CHAIRMAN said it must be admitted that the situation in certain countries was more complex than in others; the Committee could, however, decide how many meetings it would devote to the consideration of a report on a case-by-case basis, in consultation with the secretariat, without taking a final decision.

The meeting rose at 6 p.m.